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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/731,228	12/09/2003	Arnold H. Bramnick	BOC9-2003-0042 (413)	4968
40/987 7590 09/03/2008 AKERMAN SENTERFITT P. O. BOX 3188 WEST PALM BEACH, FL 33402-3188				
EXAMINER				
ROBINSON BOYCE, AKIBA K				
ART UNIT		PAPER NUMBER		
3628				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/731,228

Applicant(s)

BRAMNICK ET AL.

Examiner

AKIBA K. ROBINSON BOYCE

Art Unit

3628

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 May 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 14 and 16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 14, 16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

DETAILED ACTION

Status of Claims

1. Due to communications filed 5/21/08, the following is a final office action. Claims 1, 14 and 16 have been amended. Claims 2-13, 15 and 17-26 have been cancelled. Claims 1, 14 and 16 are pending in this application and have been examined on the merits. The previous rejection has been adjusted to reflect claim amendments. Claims 1, 14 and 16 are rejected as follows.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 14 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slivka et al., U.S. Publication No. 2003/0225600 in view of Ingrain, "Travellers Leave for Portugal after 24-hour Wait for Plane", The Globe and Mail (Canada), June 26, 1986, pg. A21 in view of Arthur et al., "Optimal Overbooking", The UMAP Journal 23(3), 2002, pg. 283-300 and further in view of Quick Stats, "NFL Tie-Breaker Procedures", accessed at

[h.t.t.p://web.archive.org/web/20020616022002/http://quickstats.com/nfl/wildcard.htm](http://web.archive.org/web/20020616022002/http://quickstats.com/nfl/wildcard.htm),
[hereinafter Quick Stats], and further in view of Boies et al., U.S. Publication No.
2002/0082878.

As per claims 1, 14, and 16, Slivka discloses a method, a system, and computer-readable storage (Slivka: Figure 1; paragraph 0018) for rebooking passengers when seats on a commercial airline flight flown by a commercial airline are overbooked, comprising the steps of:

storing passenger data for each passenger booked on said flight (Slivka: paragraphs 0032-0034);

determining a number of passengers being overbooked and to be denied boarding (Slivka: paragraphs 0014; 0036, "re-accommodation driver 111 may retrieve a Passenger Name Record (PNR) list associated with the disrupted flight..."; The denied passengers may be due to a cancelled flight.);

determining denied boarding candidates for said flight (Slivka: Fig. 2; paragraph 0036, "Following an airline flight disruption (e.g., operational disruption), an airline entity, travel agent, or other travel based entities, may determine to re-accommodate disrupted passengers.");

for each determined denied boarding candidate, obtaining the corresponding passenger data including a frequent flyer status, a remaining flight ticket value, a rebooking cost, a passenger lifetime value, and customer relationship management data, and flight operations data including flight schedule and seat availability, on the

airline and competitor airlines, (Slivka: Table 1; paragraph 0024, "rules engine 113 may associate a data code reflecting a type of travel status of a passenger, such as a frequent flyer status."; paragraphs 0033-0035, Slivka: paragraphs 0035; 0037-0038, Slivka: paragraph 0006, "...value established by airlines, ancillary services, and/or commodities, such as hotel and car reservations."; 0033-0035; 0037-0038, [0049], [0036], claim 13, Slivka: paragraphs 0007; 0015, "minimizes the provider cost of moving passengers to a different airline"; The Examiner notes, re-accommodating a passenger according to passenger revenue and minimizing the provider cost of moving passengers to a different airline suggests performing the step of computing the cost of a denied boarding candidate to travel on a different flight flown by a different commercial airline, Slivka: paragraph 0006, "...value established by airlines, ancillary services, and/or commodities, such as hotel and car reservations."; paragraphs 0033-0035 and [0004]);

processing the passenger data and the flight operations data based on a set of rules including at least one among a rule for arranging said determined denied boarding candidate..., a rule for arranging said determined denied boarding candidates according to passenger frequent flyer status, and a rule for arranging said determined denied boarding candidates according to a lifetime value of each passenger, (Slivka: paragraph 0024, "rules engine 113 may associate a data code reflecting a type of travel status of a passenger, such as a frequent flyer status."; paragraph 0026, "...rules that rank certain types of passengers.", Slivka: paragraph 0046, "the PNR list obtained in step 220 may be sorted in a particular order (e.g., descending order) based on PNR value").; and

selecting passengers from the determined denied boarding candidates for boarding based on a result of the processing , (Slivka: paragraphs 0036;0045-0046; The disrupted passengers on the ranked PNR list are re-accommodated.);

Slivka in view of Ingrain and further in view of Arthur discloses the method and computer-readable storage of claims 10 and 23 as described above. Slivka in view of Ingrain and further in view of Arthur does not disclose arranging passengers according to a descending revenue impact to the airline.

Boies teaches arranging passengers according to a descending revenue impact to the airline (Boies: Fig. 4, "430" - The Examiner notes, passengers are arranged by seat class or in descending revenue impact to the airline.).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the method and computer-readable storage of Slivka in view of Ingrain and further in view of Arthur to have included arranging passengers according to a descending revenue impact to the airline as disclosed by Boies for the advantage of reassigning passengers to different seats within their guaranteed category of seating in order to satisfy a subsequent passenger's request (Boies: paragraph 0008).

Response to Arguments

3. Applicant's arguments, see remarks, filed 5/21/08, with respect to claims 1-26 have been fully considered and are persuasive. The 35 USC 112 rejection of claims 1-26 has been withdrawn.

4. Applicant's arguments filed 5/21/08 have been fully considered but they are not persuasive.

Applicant argues that Slivka does not disclose passenger data including a remaining flight ticket value, a rebooking cost, a passenger lifetime value, and customer relationship management data, as now recited in amended independent Claims 1, 14, and 16. However the remaining flight ticket value and , a rebooking cost is disclosed through paragraphs 0033-0035; 0037-0038 of Slivka. Here, Slivka teaches computing a PNR value for each passenger that may be based, in part, on from an actual fare amount the disrupted passenger previously paid for the disrupted flight. Slivka does not explicitly teach a cost of the incentive and a rebooking cost in calculating the PNR value. However, any difference between the recited cost data in the claims (a cost of the incentive and the cost of rebooking) and the cost data taught by Slivka (fare amount the disrupted passenger previously paid for the flight) is solely found in the non-functional descriptive material of the cost data. Non-functional descriptive material cannot lend patentability to an invention that would have otherwise been anticipated by the prior art. *In re Ngai*, 367 F.3d 1336, 1339; 70 USPQ2d 1862, 1864 (Fed. Cir. 2004); *cf. In re*

Gulack, 703 F.2d 1381, 1385; 217 USPQ 401, 404 (Fed. Cir. 1983) (when descriptive material is not functionally related to the substrate, the descriptive material will not distinguish the invention from the prior art in terms of patentability. In addition passenger lifetime value is disclosed through paragraph 0006 and paragraphs 0033-0035 of Slivka. Here, the "...value established by airlines, ancillary services, and/or commodities, such as hotel and car reservations. Finally customer relationship management data is suggested through determination of passenger flow to influence revenue management as shown in [0004].

Conclusion

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Akiba K Robinson-Boyce whose telephone number is 571-272-6734. The examiner can normally be reached on Monday-Friday 9am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Hayes can be reached on 571-272-6708. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Information regarding the status of an application may be obtained from the

•Patent Application Information Retrieval (PAIR) system, Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

A. R. B.
September 4, 2008

/Akiba K Robinson-Boyce/
Primary Examiner, Art Unit 3628